IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-6033

SHARON ROE *et al*

vs

NICHOLAS NORTON

On Appeal from the United States District Court
For the District of Connecticut

MOTION TO DISMISS OR TO AFFIRM AND BRIEF IN SUPPORT THEREOF

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Appellee moves the Court to dismiss the appeal herein on the ground that no substantial Federal Question is presented by the Appeal, or to affirm the judgment sought to be reviewed on the appeal on the ground that it is manifest that the questions on which the decision of this cause depends are so insubstantial as not to need further argument.

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I. CONNECTICUT GENERAL STATUTES SECTION 52-440B (1971) CREATES A LEGITIMATE AND PERMISSIBLE METHOD OF COMMENCING TO ESTABLISH THE PATERNITY OF AN ILLEGITIMATE CHILD IN SUCH CASES WHEREIN THE MOTHER REFUSED TO DISCLOSE THE NAME OF THE PUTATIVE FATHER.

The legal obligation of a man to support his child born to an unwed mother is one of such a fundamental nature that it remains uncontested in this appeal. The very simple, basic problem that confronted Connecticut and the other states in the handling of some of the cases involving this uncontested obligation was that you cannot enforce the obligation unless the identity of the putative father is disclosed by the mother.

The basic historical background of the statute under scrutiny on this appeal is amply set forth in the opinion of the court below (Appellant's Appendix A commencing at page 10). As pointed out therein, prior attempts to handle this problem were unsuccessful because it was held that actions influencing decisions of welfare eligibility to compel disclosure of the identity of the putative father, in effect, added an additional condition of eligibility not provided for in the Social Security Act provisions setting up the AFDC program. *Doe v. Shapiro* 302 F. Supp. 761, 762 N.3 (D. Conn. 1969), *Appeal dismissed* 396 U.S. 488, *Rehearing denied* 397 U.S. 970 (1970); *Doe v. Harder* 310 F. Supp. 302 (D. Conn.), *Appeal dismissed for want of jurisdiction* 399 U.S. 902 (1970). This statute under question herein does not deny welfare benefits to any otherwise eligible applicant. Connecticut General Statutes Section 52-440(B) is part and parcel of the laws applying to paternity actions in Connecticut and its provisions apply with equal force to all mothers of illegitimate children who refuse to disclose the names of the fathers of their children.

In addition, as stated by the trial court, this statute presents no such direct and positive conflict with the federal statute as to directly impinge upon a specific provision of the Social Security Act. (Appellant's Appendix A, p. 14)

II. CONNECTICUT GENERAL STATUTES SECTION 52-440(B) ALONE AND AS PART OF A COMPREHENSIVE LEGISLATIVE SCHEME IS RATIONALLY RELATED TO A LEGITIMATE STATE END AND THE MEANS EMPLOYED ARE RATIONALLY RELATED TO THE PURSUIT OF THAT END.

The State of Connecticut has continued to show an increasingly concerned awareness of the necessity to make provisions for the protection of the rights of children.

Connecticut law provides for a three-year statute of limitations for paternity actions to the extent that no such paternity petition shall be brought after three years from the birth of such child, or after three years from the cessation of contribution toward support of the child by the putative father, whichever is later. Connecticut General Statutes Section 52-435a (1967). Further, to solve the problem of children whose illegitimacy only becomes certain by their exclusion as issue of a marriage ending in a divorce judgment, in 1971 Connecticut legislature provided an additional period of one year during which time the child or his representative could institute proceedings to establish his paternity. This provided relief for the child born to a married woman during coverture who was in effect declared illegitimate during subsequent divorce proceedings, Connecticut General Statutes Section 46-26b (1971). This statute also provides for legal representation for children in domestic litigation.

The mother and the putative father are also protected by very broad form criminal prosecution immunity provisions Connecticut General Statutes Section 52-435(a)(b) (1971).

The legitimate state purpose or end sought to be served by this statute is that of the enforcement of the parental obligation to support the child. This operation to enforce parental support is a multi-pronged one in the State of Connecticut and involves the support of all children, legitimate and illegitimate. It involves child support as it may be ordered in divorce litigation, Connecticut General Statutes Section 46-26 (1967); children in humane institutions Connecticut General Statutes Section 17-295; children who are poor and unable to support themselves, Connecticut General Statutes Section 17-320; court proceedings to enforce support Connecticut General Statutes Section 17-324; reimbursement by parents for state child support, Connecticut General Statutes Section 17-83E (1969); claim of the State upon death of a beneficiary or parent of beneficiary Connecticut General Statutes Section 17-83G. (1969). As can be seen from the foregoing, the state has evidenced a great interest in and provided for many ways in which to enforce the parental obligation to support children, both by proceedings to enforce current support, and to be reimbursed for prior support afforded to needy children.

The provision of the Connecticut law that is the subject of this appeal is but one of many provisions that exist to enforce this uncontested liability to support minor children.

Also, it ought to be pointed out that perhaps most mothers of illegitimate children will voluntarily undertake to protect their children's right to support.

III. (A) EQUAL PROTECTION IS NOT VIOLATED BY THIS STATUTE.

The Supreme Court has, through the years established a two-pronged test to determine whether a given law meets the due process requirement. As the Court discussed this test in *Eisenstadt v. Baird,* 405 U.S. 438, ft.nt. 7 359 (1972):

> "Of course, if we were to conclude that the Mass. statute impinges upon fundamental freedoms under Griswold, the statutory classification would have to be not merely *rationally related* to a valid public purpose but *necessary* to the achievement of a *compelling* state interest." See also the opinion of the Court below. (p. 25 ff. Appellant's Exhibit A)

As indicated above and in the opinion of the Court below at p. 24 the right to privacy urged by the Plaintiffs in this case is not "fundamental" in any sense that should re-

quire Constitutional protection. However, even if it could conceivably be considered fundamental, it is submitted that the interests represented by the state in this case — those of the illegitimate child to support by his father and those of the public in promoting and protecting the relationship and duties of parent and child as well as to reimbursement from legally liable relatives for monies expended to support the child are sufficiently compelling to justify state intervention in this instance. If an unborn fetus at any time can be said to have a right which is so compelling as to outweigh its mother's fundamental right to determine whether she will or will not bear a child, *Roe v. Wade*, 410 U.S. 113; 35 L. Ed. 2d 147 (1973); rehearing den. 35 L.Ed2d 694 (1973), p. 183 then it must be admitted that the right of a child which has already been born to support from its parent can hardly be considered to be less than compelling. This right becomes even more compelling when it is recalled that there is a three-year statute of limitations for paternity actions in Connecticut, Connecticut General Statutes Section 52-435a, and beyond this point the child cannot sue his father for support if his mother has not done so for him.

As to the Plaintiffs' argument that this law is based upon a discriminatory classification the answer is clear. Illegitimate children are not discriminated *against* by this statute. Rather the state by attempting to establish their paternity is trying to place them upon an equal footing with legitimate children and prevent their mothers from denying them the benefit of support by their fathers. As Judge Blumenfeld points out on p. 27 (Appellant's Appendix A) ". . . if the legislature were to enact a law protecting the 'right' of unwed mothers to exclude their children from the benefit of paternal support, it would be struck down" on the basis of *Gomez v. Perez* 409 U.S. 535, 35 L.Ed.2d 56, 60 (1973) which states:

> ". . . a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally. We therefore hold that once a State posits a judidically enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because her natural father has not married her mother."

Further, there is no discrimination against plaintiff mothers as a class based upon the fact that they are unwed mothers who are receiving welfare because the statute requires all mothers of illegitimate children to disclose the names of the putative fathers of these children whether or not the mothers are receiving public assistance. Whether or not private guardians ad litem would be less diligent in starting proceedings under this law than the welfare commissioner (and nothing has been advanced to show that they would be) can hardly be argued to bring the statute afoul of the equal protection clause. (See Appellant's Appendix A pp. 31-33)

Finally, the statute is rationally related to a valid public purpose. It is obvious on the face of the statute that it is intended to enforce the obligations of fathers to support their children which has long been considered one of the prime duties of civilized man. The State of Connecticut holds parents primarily responsible for the support of their offspring whether legitimate or illegitimate and with the State's right to do this the Plaintiffs have indicated no disagreement. The statute at issue is simply a means of enforcing this obligation on the part of fathers of illegitimate children and, in particular, in the case of these Plaintiffs and others like them receiving public assistance to recover from the fathers amounts spent out of the public coffers for the support of their children in the past and for future recurring support.

The Plaintiffs also advance an argument that the Act does not permit the finding or imprisonment of persons such as the Plaintiffs in an effort to attempt to find sources of support for those on AFDC. As has already been clearly shown a state may not require assistance in obtaining support from a putative father as an *eligibility* requirement for receiving AFDC. This Connecticut does not attempt to do by its statute; rather this is an effort to comply with 42 U.S.C. Sections 602 (a)(17)(A) (i) and (ii) by trying to establish the paternity of illegitimate children and obtain support for them. Under this law the children whose protection is the prime

consideration of AFDC, *King v. Smith* 392 U.S. 309,325 (1968), continue to receive aid. The only sanctions permissible may be imposed against the mother through the ages-old concept of contempt. There can be little doubt at this late date that the government has the power to compel persons to testify through such means, *Kastigar v. U.S.* 406 U.S. 441,443 (1972). (See the discussion of Judge Blumenfeld on this point at p. 35 ff., Appellant's Appendix A)

Thus, as was found by the Court below, there appears little doubt that the interests advanced by Plaintiffs here are not fundamental so as to be of the type entitled to fit within the constitutionally protected zone of privacy. Further, since this is so, no "compelling" state interest is required to offset the claimed interests of Plaintiffs and the interests advanced by the State of Connecticut — those of the Plaintiffs' minor illegitimate children and of the People of the State of Connecticut generally constitute a valid articulated public purpose which will be rationally implemented by the statute in question.

III. (B) DUE PROCESS IS NOT VIOLATED BY THIS STATUTE

The plaintiffs base their claim that the statute violates due process upon the fact that the law does not mandate a hearing in each individual case as to whether revealing the name of the father will have such adverse effects upon the Plaintiffs and their relationships that this adverse effect will outweigh all the quite obvious benefits which the statute would provide. The rejection of a similar argument in *Wyatt v. United States*, 362 U.S. 525,530 (1960) seems to indicate that due process would not require a hearing on this issue in every case concerning the statute presently at issue and at p. 16a in footnote 14 of his opinion Judge Blumenthal so holds in the instant case.

As Judge Blumenfeld notes at p. 16a the very use of the word "may" by the legislature obviously leaves room for judicial discretion in applying sanctions against the woman who refuses to name the father of her illegitimate child. This wording contrasts strongly with that which the Connecticut

Legislature uses ("shall") when no such liberty is to be left to a judge in determining whether to apply a given penalty.

The Court in its decision below likewise makes short shrift at p. 17 of the Plaintiffs' argument that the statute creates an unconstitutionally irrebutable presumption that the mother's naming the father of her child is in the child's best interest. As was stated above the simple fact that the law is worded so that the finding of the mother in contempt and the resultant fine or imprisonment are *permitted* to be imposed rather than mandated would seem to indicate that there is nothing irrebutable involved. However, as Judge Blumenfeld clearly indicates the concept of "irrebutable presumption" is normally concerned with an issue of fact; the decision of the Connecticut Legislature that all fathers and mothers, whether of legitimate or illegitimate children, should support those children is a value judgment in an area in which the Legislature is surely competent to act.

III. (C) CONSTITUTIONAL RIGHT TO PRIVACY IS NOT VIOLATED BY THIS STATUTE

As the Court stated in *Roe v. Wade* Supra, 176-177 (1973):

> "The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, . . . the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. . . . *only personal rights that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty,' Palko v. Conn. 302 U.S. 319,325 (1937), are included in this guarantee of personal privacy.* They also make it clear that the right has some extension to activities relating to marriage, *Loving v. Virginia*, 388 U.S. 1, 12 (1967), procreation *Skinner v. Oklahoma*, 316 U.S. 535, 541-542 (1942), contraception, *Eisenstadt v. Baird* 405 U.S. 438, 453-454 (1972), family relationships, *Prince v. Massachusetts* 321 U.S. 158, 166 (1944) and child rearing and education, *Pierce v. Society of Sisters* 268 U.S. 510, 535 (1925), *Meyer v. Nebraska* 262 U.S. 390, 399 (1923)" (Emphasis added)

However, to say that the right to privacy "has some extension to activities relating to" marriage, procreation, contraception, family relationships, and child rearing and education does not mean and cannot fairly be construed to mean, as the Plaintiffs in this case would have us believe, that every activity which could conceivably be related to any of the aforementioned areas is automatically entitled to be included in that zone of privacy protected under the Constitution. A closer look at the cases cited by the Court in *Roe v. Wade,* supra, and those mentioned in the Plaintiffs' brief show clearly the type of rights that may be considered so "fundamental" as to be guaranteed under the Constitution.

The right to determine what individual shall be one's marriage partner is protected and may not be restricted because of race *Loving v. Virginia* 388 U.S. 1, 12 (1967). Also the right to determine whether one will or will not bear children through the use of birth control has been protected in *Griswold v. Connecticut* 381 U.S. 479 (1965). On the other hand the right to determine whether one will or will not bear children through the use of abortion has been held to be not an absolute constitutional right and the States may impose certain restrictions upon it such as requiring that the woman's physician "in his best clinical judgment" recommend it as necessary or, after the first trimester, requiring that an abortion be done in a properly equipped facility by a licensed operative, and, in the final trimester of pregnancy the state may entirely prohibit an abortion. *Doe v. Bolton* 410 U.S. 179, 35 L.Ed 2d, 201, 211, 216-217 (1973), *Roe v. Wade* 410 U.S. 113 & 179, 35 L.Ed. 2d 147, 182-183 (1973). Mention of this point is made to show that even in the most private of the constitutionally protected zones of privacy the Court has not held that state regulation has absolutely no place. For example, probably very few people would attempt to read the Court's opinion in *Loving v. Virginia,* supra, as automatically rendering unconstitutional all state statutes against incestuous marriages, yet such laws do limit the freedom an individual has in determining whom he will marry.

Other cases make it quite clear that there has long been a process of weighing and balancing the interests which the state is trying to protect against those of the individual claiming a right to privacy and that often a compromise between these two competing interests has been struck as in *Roe v. Wade,* supra. Even where fundamental rights are concerned the state has been permitted to regulate when this is necessary for the individual's own person — as regulations involving the mother's health in the second trimester of pregnancy where an abortion is involved or where the opposing rights of another individual may be involved as those of the fetus in the last month of pregnancy where the same abortion is involved.

In *Prince v. Mass.* 321 U.S. 158, 170 (1944) the Court upheld a Massachusetts law which forbade children below certain ages to sell or offer for sale any magazines or other articles or pursue any other trade upon the public streets despite the contentions of the child and her guardian who were involved that this interfered with their religious freedom. (They were Jehovah's Witnesses and claimed that they were required by God as part of their religion to sell religious magazines on the streets.) Even under the later modification of Prince in *Sherbert v. Verner* 374 U.S. 398, 402-403 (1963) the Court made it clear that when there is a substantial threat to public safety, peace or order the states may regulate acts of individuals even though those actions are required by one's religion. Although the doctrine of Prince may be said to have been limited in its future application by later decisions it can in no sense be said to have been overruled. This is made clear in *Wisconsin v. Yoder* 406 U.S. 205 (1972) where at p. 219-220 the Court states:

> "But our decisions have rejected the idea that religiously grounded conduct is always outside the protection of the Free Exercise Clause. It is true that the activities of individuals even when religiously based are often subject to regulation by the States in the exercise of their undoubted power to promote health, safety and general welfare, . . ."

In *Wisconsin v. Yoder,* ibid., the Court struck down the convictions of Amish parents for failing to send their children to any formal school for secondary education until they reached age sixteen as required by Wisconsin law. In so doing the Court declared at p. 214:

> "It follows that in order for Wisconsin to compel school attendance beyond the eighth grade against a claim that such attendance interferes with the practice of a legitimate religious belief, it must appear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause."

In holding that the law interfered with the free exercise of freedom of the Amish the Court took note of the alternate informal vocational training which the Amish provided their children after their graduation from the eighth grade which had been termed by an education expert to be virtually perfect training for life in the Amish community and went on to say that the Wisconsin rule was constitutional as applied to the general population and that the decision in *Yoder* should not be construed to permit the setting up of any type of training program by any group as an alternate to state accredited education systems. An exemption was made for the Amish basically for religious reasons and because they had shown, as very few other groups could, the viability and effectiveness of their way of life and training as a group for over 200 years. *Wisconsin v. Yoder*, ibid., p. 235-236. The Court in addition at p. 230 found that permitting the Amish to continue in their traditional ways of training children would not cause "any harm to the physical or mental health of the child or to the public safety, peace, order or welfare. . ." This obviously places the present case where no claims of interference or religion are made well beyond the *Yoder* decision. Also a determination that a child is not to receive support from his father or possibly even know who his natural father is can obviously work to the harm of the child who may thus be denied physical, emotional and educational advantages which that father may be able to offer him not to mention the psychological damage which may be done to a child who is required to go through life without knowing who his father is or that his father does support him, albeit possible under legal compulsion. And this is to leave out of the discussion the interest which the general public has in having an ordered society in which fathers are required to support their children for the good of the children as well

as to relieve the public of the expense of supporting that child.

In *Meyer v. Nebraska* 262 U.S. 390, 400-401 (1923) the Court at p. 403 struck down as "arbitrary and without reasonable relation to any end within the competency of the state" a state law which, as construed by Nebraska courts, prohibited the teaching of "modern" foreign languages but not the teaching of "ancient" languages such as Latin or Greek to children who had not passed the eighth grade in order to inculcate English and American ideals in children before they learned foreign tongues and ideals and to restrict the amount of studies young children could take in the interests of their health.

Pierce v. Society of Sisters 268 U.S. 510 (1925) involved the Oregon Compulsory School Act which required all children between 8 and 16 years old to attend only public schools. This law was challenged by private schools as being unconstitutional in that it deprived them of property without due process of law and interfered with the right of parents to choose the schools in which their children were to be educated and the challenge was upheld.

It should be noted that in neither *Pierce* nor *Meyer* was the basic premise that the state could require that children receive a certain amount of education at qualified schools challenged. In *Yoder* such a challenge was upheld for religious reasons and then only for the Amish who were providing a type of alternate education. And in none of these cases was an interest of great substance opposed as it is here where both the illegitimate children and society as a whole have a great deal at stake.

Skinner v. Oklahoma 316 U.S. 535, 542 (1942) which held unconstitutional an Oklahoma statute which, for example, permitted one who had three times been convicted of stealing over $20.00 from a stranger to be named a "habitual criminal" and sterilized without his consent while one who had been thrice convicted of embezzling over $20.00 and was subject to the same jail sentences as the robber could not be declared a "habitual criminal" and sterilized without his consent; *Stanley v. Illinois* 405 U.S. 645, 658

(1972) which struck down as unconstitutional a state law which provided for a hearing before children could be removed from the care of their married parents or mother in the case of illegitimate children but for no hearing before removing illegitimate children from the custody of their natural father; and *Eisenstadt v. Baird* 405 U.S. 438, 454-455 (1972) which declared unconstitutional a Massachusetts statute which permitted the dissemination of birth control devices to married persons but not to single persons are all cases which were basically decided on the basis of the Equal Protection Clause. However, in these cases the rights involved were again those which could be ranked as fundamental — the right to be able to have children; the right to choose not to have children if one desires; and the right of putative fathers to support and care for their natural children.

In the present case Plaintiffs quite simply do not present any fundamental right which requires that their privacy should be constitutionally protected. The right to keep secret the name of the man with whom a woman has been intimate quite simply does present that same question of fundamental rights brought up by cases protecting one's right to choose a marital partner, to be able to have children or to determine when one will have children. Furthermore, even if this case could be considered to present a question of such fundamental rights to privacy the interests of the child to the support and knowledge of its natural father and of society to have children supported by their parents certainly are such as to justify the intervention of the state in this situation. (See pp. 23-24 Appellant's Appendix A)

There remain several cases relied upon by the Plaintiffs in this regard which have not been discussed. In *Haley v. Troy* 338 F.Supp. 794 (D. Mass., 1972) the Court held that there was a denial of due process where the same judge who required women to swear out nonsupport complaints against their husbands or the fathers of their children later heard the case. In passing, the Court commented at p. 804 that such a practice might violate the right to privacy without explaining exactly how this right might have been violated and then went on to state:

> "But these rights were not asserted by the plaintiffs and the court does not undertake to decide them."

As the Plaintiffs state in *Meyers v. Juras* 327 F. Supp. 759 (D. Ore. 1971) aff'd. 404 U.S. 803 (1972) the court simply held that Oregon could not impose as an eligibility requirement for AFDC any additional requirements such as assistance in gaining support from legally responsible relatives when this is not part of the federal AFDC eligibility requirements. However, the court at p. 762 clearly holds that other sanctions may be imposed to obtain assistance in gaining support from those legally liable.

A reading of *Roe v. Wade*, supra., and *Doe v. Bolton*, supra., does not bear up the Plaintiffs' contentions that they place the doctor-patient relationship within the zone of constitutionally protected privacy and without a citation to a specific page or the benefit of further analysis by the Plaintiffs it is impossible to discuss this argument further. Similarly, it remains rather a mystery as to why they place reliance upon *May v. Anderson* 345 U.S. 528 (1955) which basically deals with a conflict of laws in determining which state courts have jurisdiction to determine an award of custody of children of a divorced couple. And the *Shapiro v. Thompson* 394 U.S. 618, 613, 617 (1969) case held unconstitutional state requirements that applicants for welfare reside within the state for one year before they could be considered for public assistance as it chilled interstate travel and unfairly discriminated against those who had recently moved into the State as opposed to long-time state residents; again this case does not seem to offer much support to the Plaintiffs' claims.

Finally, as amply discussed by Judge Blumenfeld (p. 17 ff. Appellant's Appendix A) the power of the state to compel people to testify has long been established and is constitutionally limited only by the fifth amendment's privilege against self-incrimination. And the State has in this instance protected those testifying by the enactment of Public Act 439 Section 1 (1971) amending Connecticut General Statutes Section 52-435c and Public Act 439 Section 2 (1971) amending Connecticut General Statutes Section 52-435(b). (See Appellant's Exhibit A at pp. 19-20).

As Judge Blumenfeld discusses at pp. 19-20, ibid, privilege such as the marital privilege is granted by the legislature of the state and is not a constitutional right. It can hardly be considered to be a fundamental right even if it could be applied to the relationship between the unmarried mother and father of an illegitimate child. And, furthermore, the "invasion of privacy" alleged to occur under the law under question does not even involve so much as a visit to the home or affect any participation in decisions among those affected. Such an intrusion into the home was upheld as reasonable in *Wyman v. James* 400 U.S. 309 (1971) in order to see that the child who was the object of the AFDC was being benefited by the award, to see that the money was being properly used and to provide first hand information to the social worker. The "intrusion" of Plaintiffs' privacy in this case is far less than that involved in a visit into the home. In addition, by the mere fact of her pregnancy and having her child in her home the fact that an unmarried mother has an illegitimate child has been made known to a certain number of people. And revealing the name of the father to the proper authorities in order to benefit that child is scarcely a much more drastic invasion.

IV. NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY THIS APPEAL.

As pointed out by the Court below (Appellant's Appendix A pp. 5-6) this case really seems to revolve about an opinion expressed by a very few mothers of illegitimate children that they should not have to do anything to establish or protect the rights of their children as they relate to the establishing of the paternity of those children. This narrowly shared opinion, now more narrow than earlier in this litigation since the plaintiffs in the main case, *Donna Doe Et Al v. Nicholas Norton* (D. Conn. Civil No. 15, 579) (1973) moved and were granted permission by the Court below to dismiss their appeal pursuant to Rule 14 (1), comes into conflict with the public policy of the State of Connecticut. And merely because of this conflict of views the appellants attempt to raise up serious constitutional questions. There is no sound basis in law or in the United States Constitution to provide any basis for the claims of the appellants herein.

They lay claim to a constitutionally impermissible classification of "mothers" and "mothers of illegitimate children." Mothers of illegitimate children are the only mothers who are concerned with this problem, and the statute covers all such mothers.

The mere claim of constitutional deprivation and the various different names applied to their really singular difference of opinion do not give rise to any federal question of substance that ought to be further entertained by the United States Supreme Court.

The appellee respectfully requests that this Court grant his Motion to Dismiss this Appeal to affirm the decision of the Court below.

Respectfully submitted,

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Appellee

By _____
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Certification of Service

This is to certify that on the 1st day of February 1974, copies of the foregoing Motion to Dismiss or Affirm and Appellee's Brief were deposited in a United States Post Office or mail box, with first class postage prepaid addressed to counsel of record, to wit:

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